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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Adrien Joshua Espinoza,

10 Plaintiff,

11 v.

12 Phillip Irby, et al.,

13 Defendants.
14

No. CV-17-00236-TUC-DCB

ORDER

15 Defendants' Motion for Summary Judgment (Doc. 33) is now fully briefed, with the
16 Reply being filed on May 14, 2019. In the Reply, the Defendants assert for the first time
17 that the case should be dismissed because the Plaintiff commits a fraud on the Court. The
18 Plaintiff has filed a Sur-Response to the Reply. (Doc. 94.) The Court will allow the Sur-
19 Response; there shall be no Sur-Reply from Defendants. The Motion for Summary
20 Judgment is fully briefed and taken under advisement for disposition.

21 The Plaintiff continues to complain that he is not being provided copies of his legal
22 documents by library staff. (Motion to Compel/Motion to Stay (Doc. 91); *see also e.g.*
23 Order (Doc. 74) (granting Emergency Motion (Doc. 74) for extension of time to file
24 Response to Motion for Summary Judgment due to same allegations). He asks the Court
25 to compel Defendants to comply with this Court's prior directive that "Defendants [] ensure
26 that the law library staff provides Plaintiff the legal copies to which he is entitled"
27 (Order (Doc. 79) at 1.) He asks that the Court stay its ruling on the Motion for Summary
28 Judgment until he is provided the copies that are allegedly being withheld. Plaintiff asks

1 for a standing Order “encompassing all documents in this case, not just the MSJ Response.”
2 *Id.* Plaintiff asks the Court to reconsider its prior Order denying him leave to file
3 electronically because he believes electronic filing would alleviate the need for the librarian
4 to make copies, which she allegedly is not doing for him. (Motion for Reconsideration
5 (Doc. 93)). “Electronic filing is not available at Plaintiff’s place of confinement, ASPC
6 Baker Unit.” (Order (Doc. 85) at 1.) Reconsideration is denied.

7 There is no basis to stay disposition of the fully briefed Motion for Summary
8 Judgment because Plaintiff acknowledges he has been provided copies related to this
9 motion in this case, including his Response. (Motion to Compel/Motion to Stay (Doc. 91)
10 at 4.) The Court denies his request to stay consideration of the Motion for Summary
11 Judgment.

12 The Court considers the Plaintiff’s Motion to Compel and his Motion to Return
13 Copy of Documents and Originals of Exhibits. (Doc. 96.) Allegedly because the librarian
14 refused to make him copies, the Plaintiff asks the Court to provide him with copies of his
15 May 31, 2019 filings, and to return the original documents he attached as exhibits to his
16 May 31, 2019 filings. A cursory review of the numerous documents attached to the various
17 filings reflect numerous copies which are so faint or lightly copied that they are illegible.
18 The Court notes that the Plaintiff’s notations on the form 902-2 to please darken copies,
19 (e.g. Docs. 93 at 11; 91-1 at 9), is one of the objections upon which the librarian relied
20 when refusing to make copies: “DO NOT WRITE ADDITIONAL COMMENTS
21 OUTSIDE THE BOXES”; “DO NOT WRITE OUTSIDE OF THE BOXES.” (Doc. 93 at
22 9 and 11.) If Plaintiff cannot communicate such notes to the copier, the Court imagines
23 there shall need to be many resubmitted requests before a successful copy is secured, if
24 ever.

25 A review of the original documents reflects that the originals provided by the
26 Plaintiff are very faint carbon copies; the librarian cannot make copies which are any darker
27 than the originals. The Court has reviewed the stated reasons why copies were not made
28 for the Plaintiff and instead his documents were stored in the unit property room or returned

1 to him. It appears the librarian will not process his copying requests in part, and refuses to
2 make any copies and returns the copy-request form in its entirety, if the request, in part,
3 contained information, misinformation, or in some other way was non-compliant. (Doc.
4 93 at 9 and 11.)

5 The Court notes that the forms contain express instructions, such as: "List each
6 document separately. Forms packages count as one item. Unrelated exhibits count
7 separately. ATTACH DOCUMENTS." (Doc. 91-1 at 10.) The reasons for not copying
8 the Plaintiff's documents are not those expressly stated on the forms. The Court does not
9 intend to determine whether as asserted by the Defendants, the ADC employees have done
10 nothing wrong in refusing to make the requisite legal copies. This Court is interested only
11 in ensuring that this case proceeds. Therefore, the Defendants shall provide copies to the
12 Plaintiff of the documents filed with the Court on May 31, 2019. The Court cannot return
13 originals of the exhibits because the originals when scanned into the record were illegible,
14 and the Court needs the originals to review the Plaintiff's filings. The Defendants shall
15 secure legible copies of the originals and provide them to the Plaintiff.

16 **Accordingly,**

17 **IT IS ORDERED** that the Motion to Compel/Stay (Doc. 91) is DENIED.

18 **IT IS FURTHER ORDERED** that the Motion for Reconsideration (Doc. 93) is
19 DENIED.

20 **IT IS FURTHER ORDERED** that the Motion to Return Copy of Documents and
21 Originals of Exhibits (Doc. 96) is GRANTED IN PART AND DENIED IN PART, as
22 directed above: Defendants shall provide copies to the Plaintiff of all documents filed on
23 May 31, 2019, including legible copies of the exhibit documents.

24 **IT IS FURTHER ORDERED** that the Motion to Seal Document Exhibit A (Doc.

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1 97) is GRANTED; the Clerk of the Court shall file the Exhibit (Doc. 98 (lodged) into the
2 record UNDER SEAL.

3 Dated this 17th day of June, 2019.

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A handwritten signature in black ink, appearing to read "David C. Bury", is written over a horizontal line.

Honorable David C. Bury
United States District Judge